

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH D. C.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 22-cv-05326-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for disability insurance benefits ("DIB"). Plaintiff filed his application on April 11, 2019, alleging a disability onset date of January 22, 2016. AR 16, 101–02. After a hearing on October 14, 2021 (AR 34–78), Administrative Law Judge ("ALJ") Allen Erickson issued a decision finding plaintiff not disabled from his alleged onset date through June 30, 2017, plaintiff's date last insured. AR 13–33. The Appeals Council denied review of the ALJ's decision. AR 1–6.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 2. Plaintiff challenges the ALJ's decision finding him not disabled. Dkt. 4, Complaint.

I. ISSUES FOR REVIEW

A. Whether the ALJ Erred in Evaluating Medical Opinion Evidence

1 B. Whether the ALJ Erred in Evaluating Plaintiff's Subjective Symptom
2 Testimony

3 C. Whether the ALJ Erred in Plaintiff's Residual Functional Capacity ("RFC")
4 Assessment

5 II. DISCUSSION

6 A. Legal Framework

7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
8 denial of Social Security benefits if the ALJ's findings are based on legal error or not
9 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874
10 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is "such
11 relevant evidence as a reasonable mind might accept as adequate to support a
12 conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations
13 omitted). The Court must consider the administrative record as a whole. *Garrison v.*
14 *Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the
15 evidence that supports and evidence that does not support the ALJ's conclusion. *Id.*
16 The Court may not affirm the decision of the ALJ for a reason upon which the ALJ did
17 not rely. *Id.* Rather, only the reasons identified by the ALJ are considered in the scope
18 of the Court's review. *Id.*

19 As an initial matter, plaintiff contends, and the Commissioner concedes, the ALJ
20 *de facto* reopened plaintiff's May 2017 and April 2018 disability claims. Dkt. No. 10 at 3;
21 11 at 1–2. The Court thus accepts that the ALJ *de facto* reopened plaintiff's previous
22 applications.

23 B. Whether the ALJ Erred in Evaluating Medical Opinion Evidence
24
25

1 Plaintiff assigns error to the ALJ's evaluation of the medical opinions of (1) Dr.
2 Meiss, (2) Dr. Staley, (3) Dr. Regets, and (4) the Department of the Veterans Affairs.
3 Dkt. 10 at 3–10.

4 The ALJ found that plaintiff had the following severe impairments: “post-traumatic
5 stress disorder, major depressive disorder, and migraine headaches.” AR 19. Based on
6 the ALJ's review of the record, they found plaintiff's RFC was: “a full range of work at all
7 exertional levels” but with some nonexertional limitations – he was able understand,
8 remember, and apply detailed but not complex instructions, and to perform predictable
9 tasks. He was not able to work in a fast-paced, production-type environment. He could
10 be exposed to occasional workplace changes. He could have only occasional
11 interaction with the general public and with coworkers. AR 22. These were based on the
12 questions and answers with the Vocational Expert (V.E.) during the administrative
13 hearing. AR 70–71.

14 Under the regulations applicable to this case (plaintiff filed his claim on April 11,
15 2019, AR 16, 101), the ALJ must “articulate how [they] considered the medical opinions”
16 and “how persuasive [they] find all of the medical opinions” by considering
17 their supportability, consistency, relationship with the claimant, specialization, and other
18 factors, with supportability and consistency being the most important factors. 20 C.F.R.
19 § § 404.1520c(b)(2), 404.1520c(c). Further, “an ALJ cannot reject an examining or
20 treating doctor's opinion as unsupported or inconsistent without providing an
21 explanation supported by substantial evidence.” *Woods v. Kijakazi*, 32 F.4th 785 (9th
22 Cir. 2022).

23 1. Dr. Meiss
24
25

1 Dr. Peter Meiss completed a psychiatric evaluation of plaintiff in May 2017 by
2 reviewing plaintiff's records and conducting a mental status exam. AR 1591–95. Based
3 on plaintiff's performance on his cognitive exam, Dr. Meiss opined plaintiff's ability to
4 perform simple and repetitive, as well as detailed and complex tasks, is poor. AR 1594.
5 Dr. Meiss further opined that based on plaintiff's poor activities of daily living and
6 performance on the cognitive exam, plaintiff's ability to "perform work activities reliably
7 and efficiently without special or additional instructions is very poor." *Id.*

8 Dr. Meiss also opined that based on plaintiff's tendency to isolate himself in his
9 room, his ability to maintain regular attendance in the workplace is "poor," and that
10 based on plaintiff's interpersonal presentation and stated interpersonal difficulty,
11 plaintiff's ability to interact with coworkers and the public, and ability to adapt to usual
12 workplace stresses is "poor to very poor." *Id.*

13 The ALJ found that while Dr. Meiss supported his opinion with objective findings,
14 it was "not persuasive" because it "was based primarily on information from [plaintiff]
15 that . . . was at odds with [plaintiff's] own statements to his own doctors and in his
16 Function Report." AR 26. How consistent a medical opinion is with the evidence from
17 other medical sources and nonmedical sources, including in the claimant, is one of the
18 most important factors an ALJ must consider. See 20 C.F.R. §§ 404.1502(e)(1),
19 404.1520(c)(2).

20 Here, the ALJ correctly points out that many of plaintiff's statements to Dr. Meiss
21 differ from plaintiff's reports throughout the record, as further discussed below, *infra*,
22 Section C. Yet in forming his opinion, Dr. Meiss also reviewed plaintiff's work
23 assessment, and VA treatment records. AR 1591. Dr. Meiss conducted a cognitive
24
25

1 exam, in addition to considering plaintiff's statements. AR 1591, 1593. Dr. Meiss
2 explained in the "Medical Source Statement" that his opinions were "based on the
3 claimant's psychiatric condition only as assessed by the information available today,
4 *including* the claimant's mental status exam." See AR 1594 (emphasis added). Because
5 Dr. Meiss's opinion was also based on Dr. Meiss's review of plaintiff's records and
6 plaintiff's mental exam, the ALJ erred in discounting it for its primary reliance on
7 plaintiff's statements.

8 2. Dr. Staley

9 Dr. Norman Staley reviewed plaintiff's medical records in August 2020 and rated
10 plaintiff's exertional limitations. AR 108–10. He explained that based on a "[p]ossible
11 meniscus tear" on plaintiff's left knee, plaintiff can occasionally lift and/or carry 20
12 pounds, frequently lift and/or carry 10 pounds, stand and/or walk for six hours in an
13 eight-hour workday, sit for six hours in an eight-hour workday, and is unlimited in
14 pushing or pulling. AR 108–09. The ALJ found Dr. Staley's opinion "not persuasive,"
15 because of its (1) lack of supportability, (2) its inconsistency with other objective medical
16 evidence, and (3) its inconsistency with plaintiff's activities. AR 25–26.

17 With respect to the ALJ's first reason, a medical opinion's supportability is
18 measured by the relevance of the objective medical evidence and supporting
19 explanations provided by the medical source. 20 C.F.R. § 404.1520c(c)(1). Here, the
20 ALJ pointed out that Dr. Staley's exertional findings were solely based on a "possible
21 meniscus tear." AR 25, 109. Given that Dr. Staley provided no further objective medical
22 evidence or supporting explanations to support his findings, the ALJ reasonably
23 discounted his opinion based on its lack of supportability.

1 With respect to the ALJ's second reason, a medical opinion's consistency is
2 measured by how consistent it is with evidence from other medical sources and
3 nonmedical sources in the claim. See 20 C.F.R. § 404.1520c(c)(2). Here, the ALJ first
4 identified several records showing normal findings as to plaintiff's knee. AR 25–26.
5 Further, the ALJ cited an assessment about plaintiff's knee stating plaintiff "does not or
6 has never had a meniscus condition". See AR 518, 1897. The objective evidence
7 identified by the ALJ substantially supports the ALJ's findings, therefore in discounting
8 Dr. Staley's opinion based on its inconsistency with the objective medical evidence, the
9 ALJ did not err.

10 Finally, the ALJ also cited to records showing plaintiff engaged in running, but
11 those records also state plaintiff experienced intermittent pain, thus the Court cannot
12 confidently say that this was inconsistent with Dr. Staley's findings. See AR 1605.
13 However, because the ALJ provided at least one valid reason, supported by substantial
14 evidence, to discount Dr. Staley's opinion, any erroneous reasons offered by the ALJ
15 are deemed harmless. See *Carmickle*, 533 F.3d at 1162 (including an erroneous reason
16 among other reasons is at most harmless error where an ALJ provides other reasons
17 that are supported by substantial evidence).

18 3. Dr. Regets

19 Dr. Michael Regets reviewed plaintiff's record in August 2020 and opined that
20 plaintiff is, at most, moderately limited in his ability to sustain concentration and
21 persistence. AR 110–11. Specifically, Dr. Regets explained that while plaintiff's
22 concentration and persistence is "diminished at times" by his symptoms, he is able to
23 "maintain attention/concentration sufficient to complete routine tasks over a normal 8-
24
25

1 hour workday with customary breaks.” AR 111. Dr. Regets also opined that plaintiff is, at
2 most, moderately limited his ability to socially interact, and explained that while his
3 public contact must be limited, he is capable of working with a few co-workers and has
4 no “significant problems taking directions from supervisors.” AR 111.

5 Plaintiff assigns error to the ALJ’s finding that Dr. Regets’s opinion is “somewhat
6 persuasive,” and argues it is lacking in supportability and consistency because it “does
7 *not* account for [plaintiff’s] many severe mental health symptoms.” Dkt. 10 at 9.

8 In finding Dr. Regets’ opinion “somewhat persuasive,” the ALJ explained it was
9 consistent with plaintiff’s “self-isolation, irritability, and poor concentration,” and the
10 objective medical evidence demonstrating his mood and sadness, which Dr. Regets
11 referenced in his opinion. AR 26. The ALJ’s finding is supported by the record, as the
12 cited evidence shows plaintiff presented with an anxious or bad mood, was tearful, or
13 distressed, and that he isolated himself from others. AR 104–05, 1383–84, 1591. Thus,
14 the Court cannot say the ALJ unreasonably found Dr. Regets’s opinion persuasive.

15 4. VA Rating Decisions

16 Plaintiff also assigns error to the ALJ’s evaluation of the rating decision of the
17 Department of Veterans Affairs (“VA”). Dkt. 10 at 9–10; AR 280–81, 439, 443–46.

18 Plaintiff first argues the ALJ erred in declining to find his migraines as a severe
19 impairment. Dkt. 10 at 9. But contrary to plaintiff’s assertion, the ALJ did consider this
20 symptom; the ALJ found at step two of the sequential evaluation process that his
21 migraine was a severe impairment. See AR 19–20.

22 Plaintiff also seems to argue the ALJ erred in his RFC assessment by failing to
23 consider the VA’s rating decision. Dkt. 10 at 9–10. But as the Commissioner points out,
24
25

1 under the new regulations, the ALJ is not required to provide any analysis in his or her
2 decision regarding any disability decisions made by other governmental agencies,
3 including the VA, as they are “inherently neither valuable nor persuasive to issue of
4 whether [a claimant] is disabled or blind under the Act.” See 20 C.F.R. §§ 404.1504,
5 404.1520b(c)(1).

6 C. Whether the ALJ Erred in Evaluating Plaintiff’s Subjective Symptom
7 Testimony

8 Plaintiff assigns error to the ALJ’s evaluation of his symptom testimony. Dkt. 10,
9 at 10–18.

10 Plaintiff testified that he experienced symptoms of conditions of PTSD and
11 anxiety, preventing him from being able to effectively interact with other persons. AR 47,
12 66, 227, 237. Plaintiff testified that although he is able to fall asleep, he has difficulties
13 staying asleep and going back to sleep, and often only gets three to four hours of sleep.
14 AR 65. Plaintiff also testified to having migraines every day, which inhibits him from
15 being able to do certain things. AR 47, 50–51, 61. As for his physical symptoms, plaintiff
16 testified to knee pain, for which he uses a knee brace, takes medication, and obtains
17 physical therapy; and he explained that the medication and other supports do not help.
18 AR 59. Plaintiff also testified he has flat feet, which make it feel like his feet are
19 throbbing, and that his prescribed orthotics do not help. AR 57–58.

20 When asked about his living situation during the relevant period, plaintiff testified
21 he was able to drive if needed and clothe and feed his (then infant) child, though his
22 family visited to help with groceries and to take his child to appointments. AR 54–56. He
23 stated that he lacked patience and would feel “road rage” if he drove, so his spouse
24
25

1 would drive instead. AR 68. He would retreat to the garage, and often started to cry but
2 would not be able to stop crying. AR 69.

3 The ALJ found that while plaintiff's severe impairments "could reasonably be
4 expected to cause" plaintiff's alleged symptoms, plaintiff's statements as to the intensity,
5 persistence and limiting effects of those symptoms "are not entirely consistent with the
6 medical evidence and other evidence in the record." AR 23. Specifically, the ALJ
7 discounted plaintiff's testimony and relied on: (1) plaintiff's treatment history, (2)
8 inconsistency with plaintiff's activities of daily living, (3) inconsistency with the objective
9 medical evidence, and (4) plaintiff's own inconsistent statements. AR 24–25.

10 The ALJ's determinations regarding a claimant's statements about limitations
11 "must be supported by specific, cogent reasons." *Reddick v. Chater*, 157 F.3d 715, 722
12 (9th Cir. 1998) (*citing Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). In
13 assessing a plaintiff's credibility, the ALJ must determine whether plaintiff has presented
14 objective medical evidence of an underlying impairment. If such evidence is present and
15 there is no evidence of malingering, the ALJ's rejection of plaintiff's testimony regarding
16 the severity of his symptoms must be supported by substantial evidence in the record
17 and based on specific, clear and convincing reasons. *Ghanim v. Colvin*, 763 F.3d 1154,
18 1163 (9th Cir. 2014) (*citing Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

19 With respect to the ALJ's first reason, a claimant's failure to seek treatment can
20 undermine a claimant's testimony. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
21 Cir. 2008); *see also Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007) ("an 'unexplained,
22 or inadequately explained, failure to seek treatment' may be the basis for an adverse
23 credibility finding unless one of a 'number of good reasons for not doing so' applies.").

1 Here, the ALJ specifically discounted plaintiff's testimony regarding his mental
2 limitations because he refused therapy for his PTSD (AR 1387) and plaintiff stopped
3 going to therapy for his alcohol abuse after three sessions. See AR 1509, 1513, 1519,
4 1537, 1652. But when considering a claimant's treatment history, the ALJ may also
5 consider why an individual "may not understand the appropriate treatment for or the
6 need for consistent treatment of his or her impairment." See Social Security Ruling
7 ("SSR") 16-3p. Here, the ALJ's characterization of the record is not entirely accurate, as
8 it shows plaintiff's refusal to engage in therapy for his PTSD was due to his reluctance
9 "to think about what happened in combat" and because he did not think "it would be
10 helpful to relieve it again and again." See AR 1387.

11 Furthermore, the ALJ did not explain how plaintiff's decision to not resume
12 alcohol abuse therapy necessarily discounts plaintiff's testimony regarding his mental
13 limitations, given that alcohol abuse was not one of the symptoms plaintiff discussed
14 during his testimony. See AR 49–50. Thus, in discounting plaintiff's testimony regarding
15 his mental limitations based on his treatment history, the ALJ erred.

16 The ALJ also discounted plaintiff's testimony regarding migraines because they
17 were managed with conservative treatment. While improvement with conservative
18 treatment is a valid reason to discount a claimant's testimony, see *Tommasetti v.*
19 *Astrue*, 533 F.3d 1035, 1039-40 (9th Cir. 2008), the ALJ's reasoning is not supported by
20 substantial evidence. AR 25.

21 The evidence cited by the ALJ includes only a treatment note stating plaintiff
22 found putting a warm cloth over his face, drinking water, and laying down in a quiet
23 place helpful for his headache. AR 2045. The other cited treatment notes show plaintiff
24
25

1 was continuously prescribed medication for his migraines, but do not indicate whether
2 plaintiff responded favorably to the medication. AR 1367, 1380, 1434, 1605. As none of
3 the treatment notes reasonably show that plaintiff's migraines improved to a point that
4 they were inconsistent with plaintiff's testimony, in discounting plaintiff's testimony
5 regarding his migraines, the ALJ also erred.

6 With respect to the ALJ's second reason, an ALJ may discount a claimant's
7 testimony based on daily activities that either contradict their testimony or that meet the
8 threshold for transferable work skills. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).
9 Here, the ALJ first cited plaintiff's ability to attend school, but the records show plaintiff
10 only left the house once a week to do so and did the rest of his school work at home.
11 See AR 24, 1360, 1383, 1537. It is also unclear whether any of plaintiff's school work
12 translated to any skills in a work setting, therefore the Court cannot confidently say the
13 ALJ reasonably discounted plaintiff's symptoms based on school attendance. See *Kish*
14 *v. Colvin*, 552 F. App'x 650, 651 (9th Cir. 2014) (finding that "[s]chool attendance is
15 often not as physically taxing as full-time employment).

16 The ALJ next cited plaintiff's ability to live independently and care for his son. AR
17 24–25, 225–31, 237–44, 1383. The record shows plaintiff was able to attend his
18 appointments and at times, he described himself as “primary caregiver” of his son. See
19 AR 1365, 1537, 1383. But none of these activities necessarily contradict plaintiff's
20 testimony. During the hearing, plaintiff explained he was able to take care of his child
21 and he could drive if needed. AR 55–56. Finally, the ALJ cited plaintiff's ability to get
22 back into running, but as previously discussed, the record shows plaintiff still
23 experienced pain when doing so. See AR 1605, 1544. In sum, the activities identified by
24
25

1 the ALJ neither contradict plaintiff's statements about his symptoms nor do they transfer
2 to skills in a work setting, therefore in discounting plaintiff's testimony based on his
3 activities of daily living, the ALJ erred.

4 With respect to the ALJ's third reason, "[c]ontradiction with the medical record is
5 a sufficient basis for rejecting the claimant's subjective testimony." *Carmickle v.*
6 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing *Johnson v.*
7 *Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995)). Here, the ALJ cited plaintiff's examinations
8 showing he was cooperative, alert, and attentive with normal speech, logical thought
9 process, and good judgment. AR 25 (citing AR 1358-59, 1383-84).

10 But the cited evidence shows plaintiff was also depressed, anxious, and had
11 trouble sleeping. AR 1383–84. The ALJ explained that in plaintiff's other appointments,
12 there were no observations of significant mental deficits. AR 25. On the other hand, the
13 ALJ points out plaintiff's primary purpose for these appointments was to assess his
14 knee pain, get fitted for prosthetics, and keloid evaluation. Therefore it would not be
15 surprising that such appointments for physical concerns (rather than psychological or
16 psychiatric conditions) included no observations or assessments about plaintiff's mental
17 health. See AR 1345, 1362–63, 1605, 1644, 1653, 2172–76. Because none of the
18 objective medical evidence cited by the ALJ actually undermined plaintiff's statements,
19 the ALJ erred in discounting plaintiff's testimony.

20 Regarding the ALJ's fourth reason, an "ALJ may consider inconsistencies either
21 in the claimant's testimony or between the testimony and the claimant's conduct." See
22 *Molina*, 674 F.3d at 1112. Here, the ALJ explained that plaintiff's statements to Dr.
23 Meiss during his 2017 evaluation – about his alcohol use, history of suicide attempts,
24
25

1 and activities of daily living – differed from plaintiff’s other reports throughout the record.
2 AR 25. For example, the ALJ compared plaintiff’s report of “drinking a fifth of hard liquor
3 daily” in May 2017 to Dr. Meiss (AR 1591-1592) with plaintiff’s reports of continued
4 sobriety “since November 2015” to other therapists during 2016. AR 1346, 1509, 1513,
5 1519, 1617, 1637, 1652.

6 The ALJ also pointed out that plaintiff’s statements that he was suicidal and
7 endorsed suicidal ideation are not reflected in plaintiff’s other therapy notes, which show
8 plaintiff reported no suicide ideation or attempts. *Compare* AR 1591 with AR 1387,
9 1921, 1923. Yet, plaintiff also stated to Dr. Meiss that “he’s very reluctant to discuss his
10 trauma history or his mental health history. . .he’s been through it several times before
11 and it’s very painful for him to discuss.” AR 1593. The difference between plaintiff’s
12 statements in May 2017 to a board-certified psychiatrist – Dr. Meiss – and his reports to
13 other care providers throughout the record (e.g. AR 1929, notation from clinical
14 psychologist in 2016 that “[t]raumas aboard ship, he did not discuss today”, last drink
15 was in November 2015 but “smokes cannabis daily to help him sleep. . .cannabis really
16 doesn’t help”) are understandable given the statements about how plaintiff did not feel
17 safe talking about the horrible circumstances of his friend’s death he directly observed –
18 when he described his military service to Dr. Meiss (AR 1591) – his trauma, or PTSD,
19 even during his one-on-one evaluation with Dr. Meiss. AR 1593. Plaintiff’s statements
20 about not abusing alcohol were made in 2016 (e.g., the therapist describes plaintiff’s
21 situation as “[a]lcohol use disorder, in early remission”, AR 1923); this would indicate he
22 was not abusing alcohol at that time, but later when he met with Dr. Meiss, the situation
23 had changed.

1 The ALJ also compared plaintiff's statements about staying in his room all day
2 and being limited to minimal chores – with plaintiff's report, completed two months
3 before Dr. Meiss's evaluation, that he does "everything" for his son, drives, uses public
4 transportation, manages finances, and performs household chores. Yet plaintiff reported
5 to Dr. Meiss during the evaluation in May 2017 that he avoids speaking with people,
6 tends to stay in his room, stays in bed for much of the day, and does not complete any
7 chores. In a report of his daily activities in 2020, plaintiff reported that his partner did the
8 chores and took care of the family but he was not able to do so. *Compare* AR 226–27,
9 238, 1593. But mental health symptoms may wax and wane, so this is not an
10 inconsistency, considering the fact that plaintiff was struggling with PTSD and
11 depression. *See, Diedrich v. Berryhill*, 874 F.3d 634, 642-643 (9th Cir. 2017) (holding the
12 ALJ erred by rejecting plaintiff's testimony about symptoms and activities of daily living,
13 observing that mental health symptoms may wax and wane; and even if the plaintiff is
14 able to perform some of the daily activities of living, they are "likely not doing them with
15 the consistency and persistence that a work environment requires); *Garrison v. Colvin*,
16 759 F.3d 995, 1017 (9th Cir. 2014) ("it is error to reject a claimant's testimony merely
17 because symptoms wax and wane in the course of treatment") .

18 D. Whether the ALJ Properly Assessed Plaintiff's RFC

19 Plaintiff assigns error to the ALJ's RFC assessment. Dkt. 10 at 18–19.

20 The Court has found that the ALJ erred in evaluating Dr. Meiss's medical opinion,
21 and also in rejecting plaintiff's testimony about symptoms.

22 If the errors of the ALJ result in an RFC that does not include relevant work-
23 related limitations, the RFC is deficient and the error is not harmless. *Embrey v. Bowen*,

849 F.2d 418, 422-423 (9th Cir. 1988); *Stramol-Spirz v. Saul*, 848 Fed. Appx. 715, 718 (9th Cir. 2021) (unpublished). An error that is inconsequential to the non-disability determination is harmless. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)).

A proper evaluation of Dr. Meiss’s medical opinion, and plaintiff’s statements about symptoms and work-related limitations, could potentially change the questions that the ALJ would ask of the Vocational Expert, as well as the V.E.’s response to those questions; and it would potentially result in a different RFC assessment. Therefore, the ALJ’s error was harmful and the ALJ’s RFC is not supported by substantial evidence. *Embrey v. Bowen*, 422-423.

CONCLUSION

The Court concludes the ALJ improperly determined plaintiff to be not disabled, and the appropriate remedy is to reverse and remand for further proceedings.

“The decision whether to remand a case for additional evidence, or simply to award benefits[,] is within the discretion of the court.” *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If an ALJ makes an error and the record is uncertain and ambiguous, the court should remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy the ALJ’s errors, it should remand the case for further consideration. *Revels*, 874 F.3d at 668.

The Ninth Circuit has developed a three-step analysis for determining when to remand for a direct award of benefits. Such remand is generally proper only where

1 “(1) the record has been fully developed and further administrative
2 proceedings would serve no useful purpose; (2) the ALJ has failed
3 to provide legally sufficient reasons for rejecting evidence, whether
4 claimant testimony or medical opinion; and (3) if the improperly
5 discredited evidence were credited as true, the ALJ would be
6 required to find the claimant disabled on remand.”

7 *Trevizo*, 871 F.3d at 682-83 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th
8 Cir. 2014)).

9 The Ninth Circuit emphasized in *Leon* that even when each element is satisfied,
10 the district court still has discretion to remand for further proceedings or for award of
11 benefits. *Leon*, 80 F.3d at 1045.

12 Here, plaintiff asks that the Court remand for an award of benefits based on the
13 ALJ’s errors. Dkt. 10 at 19. The Court has found the ALJ harmfully erred in evaluating
14 the medical opinion of Dr. Meiss, and by rejecting plaintiff’s testimony. Accordingly,
15 remand for further proceedings is the appropriate remedy.

16 Based on the foregoing discussion, the Court concludes the ALJ’s decision
17 finding plaintiff to be not disabled is not supported by substantial evidence, and the ALJ
18 also committed legal error. Therefore, the ALJ’s decision is reversed and remanded for
19 further administrative proceedings. The Commissioner is instructed to conduct a de
20 novo hearing, allowing plaintiff to present additional evidence; the Commissioner shall
21 reevaluate Dr. Meiss’s medical opinion, and also re-assess plaintiff’s credibility; and the
22 Commissioner is directed to properly consider the evidence in all relevant steps for the
23 disability evaluation process.
24
25

1 Dated this 6th day of February, 2023.

2 

3 Theresa L. Fricke
4 United States Magistrate Judge
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25